

**DOCKET NO. 316-SE-0716**

<b>STUDENT b/n/f PARENT</b>	§	<b>BEFORE A SPECIAL EDUCATION</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>HEARING OFFICER FOR</b>
	§	
<b>QUINLAN INDEPENDENT SCHOOL</b>	§	
<b>DISTRICT,</b>	§	
<b>Respondent</b>	§	<b>THE STATE OF TEXAS</b>

**DECISION OF HEARING OFFICER**

\*\*\* (Student), by next friend \*\*\* (Parent) (collectively, Petitioner) requested an impartial due process hearing (Amended Complaint), pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* The Quinlan Independent School District (Respondent or the District) is the respondent to the Amended Complaint. Petitioner alleges the District denied Student a free appropriate public education (FAPE) by failing to provide timely and appropriate evaluations in all areas of Student’s suspected disability; failing to develop and implement appropriate individualized education program (IEP) goals, objectives, and behavioral support for Student; and by failing to educate Student in the least restrictive environment (LRE). Petitioner further contends that private placement is appropriate for Student. The District denies Petitioner’s allegations. The hearing officer finds Petitioner did not meet Petitioner’s burden of proof on any of the enumerated issues. Accordingly, Petitioner’s request for relief is denied.

**I. PROCEDURAL HISTORY AND STATUTE OF LIMITATIONS**

**A. Procedural History**

Petitioner filed a due process hearing request on July 22, 2016. The parties participated in mediation on August 30, 2016, in lieu of a resolution session, and did not reach an agreement.

On November 14, 2016, Petitioner filed the Amended Complaint. The parties did not resolve their issues at a resolution session held on November 29, 2016.

The hearing was held January 25-27, 2017, before Sharon Cloninger, hearing officer, at the District's Administration Building, 409 East Richmond, Quinlan, Texas. Lead counsel Megan Dyer Self and co-counsels Leanna Anderson and Kelley C. Cox represented Petitioner. Nona Matthews, attorney, represented Respondent. \*\*\*, Director of Special Education, appeared as the Respondent's party representative.

At the close of the due process hearing, the parties requested a February 22, 2017 deadline for filing written closing arguments and an extension of the decision due date from February 23, 2017, to March 8, 2017, for good cause.<sup>1</sup> This decision was timely issued.

## **B. Statute of Limitations**

The one-year statute of limitations applies to this proceeding.<sup>2</sup> The accrual date is July 22, 2015.

## **II. ISSUES, REQUESTED RELIEF, AND BURDEN OF PROOF**

### **A. Issues<sup>3</sup>**

The first issue is whether the District denied Student a FAPE by failing to (a) provide timely and appropriate evaluations in all areas of Student's suspected disability; (b) develop and implement appropriate IEP goals, objectives, and behavioral support for Student; and (c) educate Student in the LRE.

The second issue is whether private placement of Student is proper under the IDEA.

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<sup>1</sup> See Order No. 16 (January 30, 2017).

<sup>2</sup> 19 Tex. Admin. Code § 89.1151.

<sup>3</sup> In a "Stipulation Regarding Due Process Hearing Issue 1(a)," filed on January 18, 2017, Petitioner withdrew the previously identified issue of whether the District failed to ensure meaningful participation of Parent in the IEP process.

**B. Requested Relief**

Petitioner requests an order requiring the District to:

1. Pay for residential educational placement at \*\*\* in \*\*\*, for no less than 6 months.
2. In the alternative:
  - a. provide 1 year of compensatory educational services;
  - b. Fund a Functional Behavior Assessment (FBA) by an outside independent Board Certified Behavior Analyst (BCBA) of Parent's choice in the school setting within 60 days of the final decision;
  - c. Contract with an outside BCBA to provide services, including direct services and observation and training to the District and Student for up to 2 years;
  - d. Complete the FBA within 60 calendar days of the final decision, and thereafter convene an Admission, Review, and Dismissal committee (ARDC) meeting within 10 school days to develop an appropriate IEP, including methodologies and appropriate placement determination for Student in the LRE;
  - e. Spend more than 2 hours per month training all staff working with or who may come into contact with Student, including school resource officers, on Student's IEP, behavior plan, and general positive behavioral supports and strategies; and
  - f. Provide intensive and targeted compensatory counseling services to Student to address Student's behaviors as well as Student's \*\*\* so that Student may benefit from educational instruction.
3. Provide any other and further relief as the hearing officer deems necessary and proper.

**C. Burden of Proof**

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all

times.<sup>4</sup> A party attacking the appropriateness of an IEP established by a school district bears the burden of showing why the IEP and resulting placement were inappropriate under the IDEA.<sup>5</sup>

### III. EVIDENCE

The parties agreed that evidence of what had occurred between the accrual date of July 22, 2015, and the first day of the hearing would be presented for consideration by the hearing officer.<sup>6</sup>

#### A. Overruling Objections to Documentary Evidence

Respondent requested reconsideration of the admission of Petitioner Ex. 6 and objected to the admissibility of Petitioner Ex. 7, both expert reports, on the same hearsay grounds. The hearing officer took the objections under advisement, pending further argument presented in the parties' written closing briefs.<sup>7</sup> Neither party presented further argument on the objections. The objections are overruled.

#### B. Witnesses

1. Mother
2. \*\*\*, Executive Director, \*\*\*<sup>8</sup>
3. \*\*\*, M.A., BCBA—District's expert<sup>9</sup>

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<sup>4</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

<sup>5</sup> *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).

<sup>6</sup> Tr. at 31-32.

<sup>7</sup> Tr. at 906-918, 1014.

<sup>8</sup> Tr. at 1016-1018 (\*\*\*) (Mr. \*\*\*'s education, credentials, experience).

<sup>9</sup> Tr. at 745 (designation as District's expert); Tr. at 687-689 (\*\*\*) (Ms. \*\*\*'s education, credentials, and experience).

4. \*\*\*, Student's 2015-2016 Special Education \*\*\* (\*\*\*) teacher<sup>10</sup>
5. \*\*\*, M. Ed., BCBA—Petitioner's expert<sup>11</sup>
6. \*\*\*, Ph.D., psychologist—District's expert<sup>12</sup>
7. \*\*\*, Principal at Student's \*\*\* school<sup>13</sup>
8. \*\*\*, Ph.D., Licensed Specialist in School Psychology (LSSP)—District's expert<sup>14</sup>
9. \*\*\*, M. Ed., Educational Diagnostician—Petitioner's expert<sup>15</sup>
10. \*\*\*, Student's 2016-2017 Special Education \*\*\* teacher<sup>16</sup>

#### IV. FINDINGS OF FACT

##### A. Background

1. Student resides with \*\*\* in the District, where Student has attended school since \*\*\*.<sup>17</sup>
2. Student, age \*\*\*, currently attends \*\*\* grade at a District \*\*\*.<sup>18</sup>
3. Student is eligible for and receives special education services as a child with an \*\*\* (\*\*\*), \*\*\* (\*\*\*), \*\*\* (\*\*\*), and Multiple Disabilities.<sup>19</sup>

##### \*\*\* Grade (2011-2012)

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<sup>10</sup> Tr. at 513-518 (\*\*\*) (Ms. \*\*\*'s education, credentials, and experience).

<sup>11</sup> Tr. at 342 (designation as Petitioner's expert).

<sup>12</sup> Tr. at 1133 (designation as District's expert); Tr. at 1121-1123 (\*\*\*) (Ms. \*\*\*'s education, credentials, and experience).

<sup>13</sup> Tr. at 776 (\*\*\*)

<sup>14</sup> Tr. at 220-222 (designation as District's expert); Tr. at 192-196 (\*\*\*) (Dr. \*\*\*'s education, credentials, experience, and current job responsibilities with District).

<sup>15</sup> Tr. at 937, 943 (designation as expert in academic goal writing and educational diagnostics); Tr. at 923-929 (\*\*\*) (Ms. \*\*\*'s education, credentials, experience); Petitioner Ex. 7 at 15-19 (Ms. \*\*\*'s *curriculum vitae*).

<sup>16</sup> Tr. at 811, 854-855, 857-858 (\*\*\*) (Ms. \*\*\*'s education and training).

<sup>17</sup> Joint Ex. 11 at 10; Joint Stipulated Fact (JSF) 1. JSFs were submitted by the parties on January 18, 2017, and have been condensed by the hearing officer.

<sup>18</sup> JSF 1.

<sup>19</sup> Tr. at 1146 (\*\*\*); Joint Ex. 17 at 10; Tr. at 1192 (\*\*\*); JSF 2; *see also* Joint Ex. 11 at 12.

4. As of October \*\*\*, 2011, Student had missed \*\*\* days of the first 8 weeks of school and was far behind in Student's work. At a review ARDC meeting held on that date, Mother reported Student was \*\*\*, \*\*\*, \*\*\*. The ARDC determined Student's behavior was worsening, Student was refusing to work, and Student often said Student was sick so Student could go home. The ARDC requested an FBA and Counseling Assessment to address Student's absences and failing grades.<sup>20</sup>
5. On January \*\*\*, 2012, the ARDC reviewed the December \*\*\*, 2011 Full Individual Evaluation (FIE). The ARDC added \*\*\* as an eligibility under the IDEA and listed counseling as a related service. The ARDC determined Student's behaviors would be addressed through goals and objectives, and accommodations, as recommended by the FBA evaluator, rather than through a Behavior Intervention Plan (BIP).<sup>21</sup>

**\*\*\* Grade (2012-2013)**

6. The annual ARDC met on \*\*\*, 2012. In an effort to help Student feel more successful and improve Student's behavior, the ARDC changed Student's placement to a self-contained classroom effective \*\*\*, except that Student would attend \*\*\* and \*\*\* in the general education setting.<sup>22</sup>

**\*\*\* Grade (2013-2014)**

7. On October \*\*\*, 2013, the ARDC requested another FBA.<sup>23</sup> On November \*\*\*, 2013, the ARDC reviewed the FBA and developed Student's first BIP.<sup>24</sup> \*\*\* was not identified as a behavior of concern by Mother or Student's teacher.<sup>25</sup>

**\*\*\* Grade (2014-2015)**

8. Student continued to have behavior problems in the fall of 2014. Student was \*\*\* for discipline multiple times. In September 2014, Student allegedly \*\*\*. In \*\*\* 2014, Student was restrained for attempting to \*\*\*. Student was also referred to the office for being disrespectful and preventing a teacher from teaching the class.<sup>26</sup>

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<sup>20</sup> Tr. at 251-252, 255, 257-258 (\*\*\*) ; JSF 5. The purpose of an FBA is to determine what is causing the behavior (*i.e.* function of behavior) in order to develop a Behavior Intervention Plan (BIP). Tr. at 197-198 (\*\*\*) .

<sup>21</sup> Tr. at 196-201, 204-206 (\*\*\*) ; Petitioner Ex. 2; JSF 7. Counseling services were discontinued after the 2013-2014 school year because Student had met Student's goals. Tr. at 132 (\*\*\*) ; Joint Ex. 1 at 73; Joint Ex. 11 at 12.

<sup>22</sup> JSF 8.

<sup>23</sup> Joint Ex. 23 at 1-20; JSF 9.

<sup>24</sup> Tr. at 201-204, 207-208 (\*\*\*) ; Petitioner Ex. 3 at 35-36; JSF 10.

<sup>25</sup> Joint Ex. 23 at 6, 13.

<sup>26</sup> Joint Ex. 1 at 82-87; Joint Ex. 3 at 43.

9. On October \*\*\*, 2014, Mother took Student to the \*\*\*. \*\*\*. Student was \*\*\*.<sup>27</sup>
10. An annual ARDC meeting was held on November \*\*\*, 2014. No member of the ARDC, including Mother, indicated any suspicion that Student had an unidentified disability.<sup>28</sup>
11. The ARDC developed an IEP to remain in effect through November \*\*\*, 2015.<sup>29</sup> The ARDC, including Mother, reached mutual agreement on Student's IEP.<sup>30</sup>
- a. A number of accommodations were included in the IEP.<sup>31</sup>
  - b. The ARDC developed six measurable annual IEP goals for Student in academic areas and one \*\*\* goal, with corresponding objectives.<sup>32</sup>
12. The November 2014 IEP included a BIP to help Student increase Student's social skills.<sup>33</sup>
- a. Student was making academic progress, but Student's behavior impeded Student's learning. Targeted behaviors included \*\*\*. The ARDC noted that Student was \*\*\*.<sup>34</sup>
  - b. The District's LSSP did not see Student's October \*\*\*, 2014 \*\*\* record from \*\*\* until after completing Student's BIP.<sup>35</sup>
  - c. The BIP identified three inappropriate behaviors for which replacement behaviors, positive behavioral interventions, strategies, supports, recommended consequences, and mastery criteria were listed.<sup>36</sup>
  - d. Short-term objectives under the goal included being able to \*\*\* and being able to \*\*\*, with less than three discipline referrals per school year.

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<sup>27</sup> Tr. at 302-303 (\*\*\*); Joint Ex. 1 at 81, 84; Joint Ex. 12 at 110.

<sup>28</sup> Joint Ex. 1 at 2, 73.

<sup>29</sup> Joint Ex. 1. The IEP that resulted from this ARDC meeting was revised in May 2015 and was in effect until November 2015, after the July 22, 2015 accrual date for this proceeding. Because the IEP was developed before the accrual date, its appropriateness is not at issue. At issue is whether it was implemented between August \*\*\*, 2015, and November \*\*\*, 2015.

<sup>30</sup> Joint Ex. 1 at 75.

<sup>31</sup> Joint Ex. 1 at 65, 67-68.

<sup>32</sup> Tr. at 261-262 (\*\*\*); Joint Ex. 1 at 43, 51-64.

<sup>33</sup> The 2013 BIP and 2014 BIP contained the same goals but changes were made to positive behavioral strategies and consequences. Tr. at 123-128, 208-212 (\*\*\*); Petitioner Ex. 3 at 36; Joint Ex. 1 at 37, 42-43, 73.

<sup>34</sup> Joint Ex. 1 at 73.

<sup>35</sup> Tr. at 131, 262 (\*\*\*).

<sup>36</sup> A BIP need not include a flow chart of consequences to address all contingencies. Tr. at 263-264 (\*\*\*); Joint Ex. 1 at 43.

- e. The BIP did not address Student's \*\*\* or \*\*\* because Student did not exhibit a pattern of \*\*\* or \*\*\* behavior.<sup>37</sup>
13. The November \*\*\*, 2014 ARDC timely requested a re-evaluation FIE of Student to be completed by December \*\*\*, 2014, three years after the December \*\*\*, 2011 FIE.<sup>38</sup>
14. On December \*\*\*, 2014, the multi-disciplinary team completed Student's FIE.<sup>39</sup> Student's score of \*\*\* on Student's IQ testing, Student's adaptive behavior test results, and Student's achievement test results showed Student needed \*\*\* training with the best possibility being attainment of a \*\*\*-grade level of education.<sup>40</sup> Student was functioning academically at the \*\*\*-grade and \*\*\*-grade levels.<sup>41</sup> Student's adaptive behavior composite score was below the \*\*\* percentile.<sup>42</sup>
15. The ARDC reconvened on January \*\*\*, 2015, to consider Student's December \*\*\*, 2014 FIE. No changes were made to Student's IEP, including the BIP, as a result of the FIE review.<sup>43</sup> The ARDC determined Student continued to be eligible for and need special education services as a student with \*\*\*.<sup>44</sup> Mother did not indicate any disagreement with the ARDC decisions or indicate Student had any additional suspected disability.
16. In the spring of 2015, Student took the State of Texas Assessments on Academic Readiness (STAAR) \*\*\*. Student scored "unsatisfactory" in \*\*\*; "satisfactory" in \*\*\*; and "Accomplished" in \*\*\*.<sup>45</sup>
17. On \*\*\*, 2015, Student was referred to the office for \*\*\*.<sup>46</sup> The following day, Student was placed in a Disciplinary Alternative Education Program (DAEP) for \*\*\* days after the ARDC determined in a Manifestation Determination Review (MDR) that the \*\*\* was not a manifestation of Student's disability because the \*\*\*.<sup>47</sup>

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<sup>37</sup> Tr. at 129-130, 209-210, 214-215 (\*\*\*); Joint Ex. 1 at 43, 82, 84.

<sup>38</sup> Joint Ex. 1 at 2.

<sup>39</sup> Joint Ex. 2.

<sup>40</sup> Tr. at 224-225, 285-286 (\*\*\*); Joint Ex. 2 at 24.

<sup>41</sup> Tr. at 216, 222 (\*\*\*); Joint Ex. 2 at 11-15; *see also* Tr. at 1176 (\*\*\*).

<sup>42</sup> Joint Ex. 2 at 15-16.

<sup>43</sup> Joint Ex. 3.

<sup>44</sup> Joint Ex. 3 at 9.

<sup>45</sup> Joint Ex. 7 at 2, 89; Joint Ex. 11 at 13. \*\*\*. Joint Ex. 7 at 34.

<sup>46</sup> Tr. at 136-137 (\*\*\*); Joint Ex. 6.

<sup>47</sup> Tr. at 63 (Mother); Joint Ex. 4 at 26; Joint Ex. 5 at 8.



18. Student's BIP and MDR were reviewed in revision ARDC meetings on May \*\*\*, 2015, and May \*\*\*, 2015.<sup>48</sup> Although Mother expressed concern about Student's \*\*\*,<sup>49</sup> the ARDC did not add \*\*\* to the BIP because Student had only \*\*\* instances of prior aggression and did not exhibit a pattern of aggression.<sup>50</sup> After Mother provided the ARDC with information regarding Student's \*\*\* diagnosis, the ARDC recommended that an FBA be conducted. Pursuant to Mother's request, the FBA was to occur a month after school started again in August 2015.<sup>51</sup> The ARDC reached mutual agreement.<sup>52</sup> No ARDC member, including Mother, indicated a suspicion of any additional disability.<sup>53</sup>

**B. \*\*\* Grade (August 2015 – December 2015)**

19. Student's IEP as developed in November 2014 and revised in May 2015 was in effect from the beginning of \*\*\* grade through November \*\*\*, 2015.<sup>54</sup>

**Implementation of November 2014 Annual IEP as Revised in May 2015**

20. Student made academic progress during the first semester of the 2015-2016 school year.<sup>55</sup>
21. At the end of the second grading period, Student was passing all Student's classes.<sup>56</sup>
22. Student mastered Student's \*\*\* goal and made meaningful progress on the remaining goals, with an expectation that Student would master the \*\*\* goal by the next annual ARDC meeting.<sup>57</sup>
23. Student learned many things beyond Student's IEP goals, at the prerequisite to Student's grade-level Texas Essential Knowledge and Skills (TEKS), working at between a \*\*\*-

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<sup>48</sup> Joint Ex. 5; Joint Ex. 6.

<sup>49</sup> Tr. at 103-104 (Mother).

<sup>50</sup> Tr. at 133-135 (\*\*\*) ; Joint Ex. 4 at 6-7, 21-25; Joint Ex. 6 at 8.

<sup>51</sup> Joint Ex. 6 at 8.

<sup>52</sup> Tr. at 213-215 (\*\*\*) ; Joint Ex. 6 at 9.

<sup>53</sup> Joint Ex. 5; Joint Ex. 6.

<sup>54</sup> The appropriateness of the November 2014 and May 2015 IEPs is not at issue because they were developed before the July 22, 2015 accrual date. At issue is whether the November 2014 and revised May 2015 IEPs were properly implemented after the accrual date and before the new annual IEP was effective. Joint Ex. 1, Joint Ex. 5, Joint Ex. 6.

<sup>55</sup> Tr. at 565-566 (\*\*\*) ; Joint Ex. 7 at 61-88.

<sup>56</sup> Joint Ex. 7 at 88.

<sup>57</sup> Tr. at 546-554 (\*\*\*) ; Respondent Ex. 3 at 2- 8; Joint Ex. 7 at 19- 25.

grade and \*\*\*-grade level. Student's function level academically was around \*\*\* grade or \*\*\* grade intellectually.<sup>58</sup>

### **Development of Annual IEP**

24. The annual ARDC meeting began on \*\*\*, 2015, and reconvened and concluded on December \*\*\*, 2015.<sup>59</sup> The ARDC, including Mother—who was accompanied by an advocate and an attorney—reached consensus.<sup>60</sup>
25. In developing Student's annual IEP, the ARDC considered Student's Present Levels of Academic Achievement and Functional Performance (PLAAFPs and other information from Student's special education teacher.<sup>61</sup> Student's special education teacher based the PLAAFPs on her work with Student.<sup>62</sup>
26. The ARDC considered Student's \*\*\* needs through Student's \*\*\* and a review of Student's work samples.<sup>63</sup>
27. The ARDC drafted IEP goals to be in effect from December \*\*\*, 2015, through October \*\*\*, 2016, reaching consensus with Mother and her advocates. Measurable goals in \*\*\*, \*\*\*, \*\*\*, \*\*\*, and \*\*\*, and a \*\*\*/\*\*\* goal were adopted. A progress report was to be provided to Mother every 6 weeks.<sup>64</sup>
28. The IEP provided for \*\*\* to reduce Student's possibility of experiencing difficulties in areas of \*\*\*, impulsivity, behavior, \*\*\*, or attending to tasks.<sup>65</sup>
29. The ARDC developed a chart of supplementary aids and services, instructional accommodations and supports, and content and assessment modifications. The chart was provided to Student's special education teacher, her supervisor, and the \*\*\* and \*\*\* teachers.<sup>66</sup>
30. Student was to be provided psychological consultation services and \*\*\* services when the school \*\*\* to Student.<sup>67</sup>

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<sup>58</sup> Tr. at 533-534, 539 (\*\*\*).

<sup>59</sup> Joint Ex. 7.

<sup>60</sup> Joint Ex. 7 at 46-47.

<sup>61</sup> Joint Ex. 7 at 12-14, 90-129. PLAAFPs determine the baseline for the ARDC to use when drafting IEP goals for a student. Tr. at 953 (\*\*\*).

<sup>62</sup> Tr. at 542 (\*\*\*).

<sup>63</sup> Joint Ex. 7 at 17-18, 43, 90-94.

<sup>64</sup> Tr. at 536-540 (\*\*\*); Joint Ex. 7 at 11, 26-31, 43-44, 46.

<sup>65</sup> Joint Ex. 7 at 11.

<sup>66</sup> Tr. at 562 (\*\*\*); Joint Ex. 7 at 32, 44; *see also* Joint Ex. 7 at 95-96.

<sup>67</sup> Joint Ex. 7 at 39; Joint Ex. 11 at 14.

### Behavioral History and BIP

31. Student's BIP as revised in May 2015 was properly implemented through the fall of 2015.<sup>68</sup>
- a. Before the school year began, Student's special education teacher reviewed Student's BIP, met with the District's LSSP for BIP training, and gave copies of the BIP to school staff who would interact with Student on a behavioral basis.<sup>69</sup>
  - b. From the first day of school through \*\*\*, 2015, Student demonstrated acceptable behavior. Student had no discipline referrals, write-ups, In-School Suspensions, suspensions, or restraints.<sup>70</sup>
32. On December \*\*\*, 2015, the ARDC developed a BIP that was to be in place from December \*\*\*, 2015, through December \*\*\*, 2016.<sup>71</sup>
- a. In developing the BIP, the ARDC considered information from school staff, Mother, Student; the 2014 FIE; the 2013 FBA; and discipline records.<sup>72</sup>
    - i. On \*\*\*, 2015, Student \*\*\*. The teacher \*\*\*. \*\*\*. Student was held in a \*\*\* restraint, as Student was \*\*\*. This was Student's \*\*\* restraint for the 2015-2016 school year.<sup>73</sup>
    - ii. On \*\*\*, 2015, Student received Student's \*\*\* office referral for the school year, resulting in a \*\*\* suspension. After Student was suspended, Mother informed District staff that she knew Student would have a bad day because Student's \*\*\* and Student had not \*\*\*.<sup>74</sup>
  - b. The ARDC found the 2013 FBA to remain appropriate. The FBA identified Student's target behaviors as \*\*\*. A review of Student's discipline/behavior records showed Student had \*\*\* suspension since school began; \*\*\*; and had been restrained \*\*\*. Student did not exhibit a pattern of \*\*\* or \*\*\*. But because

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<sup>68</sup> Tr. at 211-212 (\*\*\*) ; see, e.g., Joint Ex. 7 at 105-129; see also Joint Ex. 1 at 42.

<sup>69</sup> Tr. at 470-475, 519 (\*\*\*) ; Joint Ex. 1 at 42-43.

<sup>70</sup> Tr. at 215, 226, 229-230 (\*\*\*) ; Tr. at 520-521 (\*\*\*) ; Joint Ex. 7 at 42.

<sup>71</sup> Pet. Ex. 3 at 37-39; Joint Ex. 7 at 15.

<sup>72</sup> Pet. Ex. 3 at 37-39; Joint Ex. 7 at 15.

<sup>73</sup> Tr. at 567-571 (\*\*\*) ; Joint Ex. 7 at 97-98; see Tex. Educ. Code § 37.0021, 19 Tex. Admin. Code § 89.1053, regarding the use of restraint in school.

<sup>74</sup> Tr. at 580-581 (\*\*\*) ; Joint Ex. 7 at 122-129.

Student's behavior impeded Student's learning or that of others, the ARDC continued to keep Student's BIP in place.<sup>75</sup> \*\*\* was not added to the BIP.<sup>76</sup>

- c. The BIP contained two objectives to help Student increase Student's coping skills. Student was to \*\*\* of the time, and \*\*\* of the time. Evaluation every 6 weeks would be through teacher observations and discipline referrals.<sup>77</sup>
  - i. Student's BIP for the 2015-2016 school year contained the same goals as Student's 2013 BIP and November 2014 BIP except that Student could attain the goals with \*\*\* mastery instead of \*\*\* mastery.<sup>78</sup>
  - ii. The ARDC changed the replacement behavior to \*\*\* prompts because Student would respond more quickly than if given \*\*\* prompts.<sup>79</sup>

### **Implementation of 2015 BIP**

33. The District's LSSP provided copies of and training on the 2015 BIP to \*\*\* administrators, Student's special education teacher, and other teachers and staff who interacted with Student.<sup>80</sup>

### **Evaluations**

34. The ARDC's review of existing evaluation data (REED) established that more data was needed to determine Student's eligibility and need for special education services. The District agreed to conduct a psychological evaluation, including counseling, and \*\*\* and \*\*\* evaluations and a communication assessment to evaluate Student's \*\*\*.<sup>81</sup> The due date for the new data was February \*\*\*, 2016.<sup>82</sup>
35. Between the July 22, 2015 accrual date and the December \*\*\*, 2015 reconvened ARDC meeting, Mother did not request any evaluation of Student.

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<sup>75</sup> Tr. at 112, 215, 226, 229-230, 251-252, 255, 257-258 (\*\*\*); Pet. Ex. 3 at 37-39; Joint Ex. 7 at 14, 43; Joint Ex. 11 at 1-14.

<sup>76</sup> Tr. at 148-149 (\*\*\*); Joint Ex. 7 at 98. After the ARDC revised Student's discipline records, Student was restrained on \*\*\*, 2015, for \*\*\*. Joint Ex. 7 at 128.

<sup>77</sup> Joint Ex. 7 at 16.

<sup>78</sup> Tr. at 145-148, 190-191 (\*\*\*); Joint Ex. 7 at 15-16.

<sup>79</sup> Tr. at 545 (\*\*\*); Joint Ex. 7 at 15.

<sup>80</sup> Tr. at 161-164, 225-226 (\*\*\*); Joint Ex. 7 at 16.

<sup>81</sup> Joint Ex. 7 at 42.

<sup>82</sup> Pet. Ex. 3 at 37-39; Joint Ex. 7 at 1-2, 5.

36. The FBA that was recommended by the May 2015 ARDC, but postponed at Mother's request until the beginning of the 2015-2016 school year, had not been conducted.<sup>83</sup> From the first day of school until \*\*\*, 2015, Student had demonstrated acceptable behavior. An updated FBA was not needed at the beginning of the school year because there was no pattern of \*\*\* or \*\*\* to assess.<sup>84</sup>
37. At the December \*\*\*, 2015 reconvened ARDC meeting, the ARDC agreed to Mother's request for Independent Educational Evaluations (IEEs) in the following areas: Cognitive, Achievement, and Functional Behavior.<sup>85</sup>
38. The ARDC timely ordered an updated FIE and IEEs to assess Student in all areas of suspected disability.

### **Least Restrictive Environment**

39. In \*\*\* 2015, Student was sent to DAEP for \*\*\* days and \*\*\* had \*\*\* days left to serve. In lieu of Student spending the remaining \*\*\* days in DAEP due to Student's \*\*\* 2015 disciplinary placement, all of Student's classes were in the special education setting until the \*\*\* days were served.<sup>86</sup> The placement was in the LRE.<sup>87</sup>
40. The LRE for the remainder of the 2015-2016 school year was in the \*\*\* classroom for all of Student's academic instruction by a special education teacher, with the support of a paraprofessional, implementation of the BIP, and a \*\*\*.<sup>88</sup> On average, \*\*\* was in the \*\*\* classroom but \*\*\* could come and go. Student took \*\*\* and \*\*\* in the general education setting.<sup>89</sup>

### **C. \*\*\* Grade (January 2016 - May 2016)**

41. The ARDC met on March \*\*\*, April \*\*\*, and May \*\*\*, 2016, to review existing evaluation data, the February \*\*\*, 2016 FIE, and the April \*\*\*, 2016 IEE performed by the independent educational diagnostician. The ARDC members, including Mother, reached consensus in revising Student's IEP.<sup>90</sup>

### **Evaluations: February \*\*\*, 2016 FIE**

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<sup>83</sup> Tr. at 144 (\*\*\*); Joint Ex. 6 at 8; Joint Ex. 7 at 14.

<sup>84</sup> Tr. at 215, 226, 229-230 (\*\*\*); Tr. at 521 (\*\*\*); Joint Ex. 7 at 42.

<sup>85</sup> Joint Ex. 7 at 42.

<sup>86</sup> Joint Ex. 5 at 8; Joint Ex. 6 at 6.

<sup>87</sup> Joint Ex. 6 at 4-7; *see also* Joint Ex. 1 at 66, 69-70, 72.

<sup>88</sup> Tr. at 307 (\*\*\*); Joint Ex. 7 at 36-40.

<sup>89</sup> Tr. at 467-470, 512-513 (\*\*\*).

<sup>90</sup> Tr. at 590 (\*\*\*); Joint Ex. 12 at 1, 10, 35-40, 43-50, 63-65.

42. A re-evaluation of Student was ordered by the ARDC in December 2015, resulting in the February \*\*\*, 2016 FIE report.<sup>91</sup>
43. At the time of the FIE, Student had been absent \*\*\* days in the school year.<sup>92</sup>
44. Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Mother and teachers, which enabled the multi-disciplinary team to determine Student's continued eligibility as a child with \*\*\* and new eligibility of \*\*\*.<sup>93</sup>
- a. Student meets the IDEA disability criteria for \*\*\* because Student \*\*\*. The characteristics have been exhibited over a long period of time and to a marked degree.<sup>94</sup>
  - b. Not all of Student's maladaptive behavior can be attributed to \*\*\*. Student concurrently displays behaviors consistent with \*\*\*, including \*\*\*. To excuse or safeguard Student from the consequences of Student's \*\*\* behavior would reinforce Student's poor choices and prevent Student from learning from Student's mistakes. In addressing any future disciplinary action, the ARDC must consider if the conduct in question is the result of \*\*\* or caused by Student's poor choices.<sup>95</sup> A restraint is not a consequence.<sup>96</sup>
45. The psychological evaluation contained in the FIE was timely because Student did not present as a child with \*\*\* before the 2016 FIE was ordered by the ARDC in December 2015.<sup>97</sup>
46. Mother agrees with the District LSSP's report that Student is \*\*\* and can be \*\*\*, and with the 2016 FIE determination that Student is eligible for special education services as a child with \*\*\*, \*\*\*, and \*\*\*.<sup>98</sup>
47. The multi-disciplinary team determined Student needs the related service of \*\*\* to benefit from special education. The team recommended \*\*\* minutes of \*\*\*, three times per semester, in the special education setting.<sup>99</sup>

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<sup>91</sup> Joint Ex. 10 at 1-3; Joint Ex. 11 at 1, 26-27, 30-31; Joint Ex. 12 at 35-36.

<sup>92</sup> Joint Ex. 11 at 13.

<sup>93</sup> Tr. at 236-244 (\*\*\*) ; Joint Ex. 11 at 1-2, 12, 17-22, 27-28, 33-34, 36.

<sup>94</sup> Joint Ex. 11 at 36.

<sup>95</sup> Tr. at 170 (\*\*\*) ; Joint Ex. 11 at 23, 36-37.

<sup>96</sup> Tr. at 153 (\*\*\*) .

<sup>97</sup> Tr. at 245-247 (\*\*\*) ; Joint Ex. 11 at 1.

<sup>98</sup> Tr. at 82-85 (Mother).

<sup>99</sup> Tr. at 173 (\*\*\*) ; Joint Ex. 11 at 32.

48. The multi-disciplinary team did not recommend Special Education Counseling because insight-oriented cognitive-based therapy would not be effective given Student's \*\*\*. Instead, classroom-based social skills instruction was recommended.<sup>100</sup>
49. The 2016 FIE described Student's levels of educational performance to be at the \*\*\* level for \*\*\* and below grade level in \*\*\*, due to Student's \*\*\*.<sup>101</sup>
50. The 2016 FIE report contained recommendations for the ARDC to use in its decisions regarding Student's IEP, including a recommendation that Student continue to receive special education instruction in a small group in a self-contained classroom.<sup>102</sup>
51. The multi-disciplinary team was composed of qualified professionals, including an LSSP, an educational diagnostician, a licensed speech therapist, and an occupational therapist.<sup>103</sup>
52. The tests and other evaluation materials were administered by trained personnel in conformance with the instructions provided by their producers.<sup>104</sup>
53. The 2016 FIE provided the ARDC with necessary information to develop Student's IEP.<sup>105</sup>
54. The multiple assessments are well-recognized tests specifically chosen by Student's evaluators to provide an accurate assessment of Student's strengths and weaknesses in all areas to develop an appropriate IEP for Student.<sup>106</sup>
55. Student was assessed in all areas of suspected disability and the 2016 FIE was sufficiently comprehensive to identify all of Student's educational and related services needs, whether or not those services are commonly linked to the disability category in which Student has been classified.<sup>107</sup>
  - a. The District LSSP took Student's medical diagnosis of \*\*\* into consideration when conducting the psychological evaluation.<sup>108</sup>

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<sup>100</sup> Joint Ex. 11 at 31.

<sup>101</sup> Joint Ex. 11 at 1, 26.

<sup>102</sup> Joint Ex. 11 at 1, 23-24, 28.

<sup>103</sup> Tr. at 228 (\*\*\*) ; Joint Ex. 11 at 1, 28, 33, 35-37.

<sup>104</sup> Joint Ex. 11 at 25, 36-37.

<sup>105</sup> Joint Ex. 11 at 25.

<sup>106</sup> Joint Ex. 11 at 25.

<sup>107</sup> Joint Ex. 11 at 33.

<sup>108</sup> Tr. at 303 (\*\*\*) ; Joint Ex. 12 at 35.

- b. The 2016 FIE report revealed Student does not have hearing loss;<sup>109</sup> a language disability;<sup>110</sup> or significant sociological factors that affect Student's ability to learn.<sup>111</sup> Student does not need Occupational Therapy (OT).<sup>112</sup>
56. The results of the psychological evaluations conducted by the District LSSP for the FIE and the independent psychologist as an IEE are consistent.<sup>113</sup>

### **Evaluations: IEEs**

57. An IEE prepared by an independent educational diagnostician was reviewed at the April \*\*\*, 2016 reconvened ARDC meeting. The purpose of the IEE was to appropriately plan for and address Student's educational needs. The IEE did not include the FBA ordered by the District due in part to a malfunction of the independent educational diagnostician's computer.<sup>114</sup> She observed Student in the classroom for about 2 hours.<sup>115</sup> She drew conclusions that are beyond her credentials and used evaluations she either is not qualified to give or that were not appropriate for Student.<sup>116</sup>
58. On April \*\*\*, 2016, and April \*\*\*, 2016, the District agreed to Mother's requests for independent psychological, language, counseling, and OT evaluations.<sup>117</sup> Mother and her attorney did not select the independent evaluators until June \*\*\*, 2016. Mother missed two appointments with the independent psychologist before meeting with her on September \*\*\*, 2016.<sup>118</sup>

### **Development of IEP**

59. In revising Student's IEP, the ARDC considered Student's PLAAFPs, \*\*\*, services, \*\*\*, Student's BIP, communication needs, pertinent medical records, grades, attendance records, and disciplinary reports.<sup>119</sup>
60. The ARDC drafted 13 measurable annual IEP goals to be in effect through \*\*\*, 2016.<sup>120</sup>

<sup>109</sup> Joint Ex. 12 at 35; Joint Ex. 11 at 3-5, 9-10.

<sup>110</sup> Joint Ex. 12 at 35; Joint Ex. 11 at 6-9.

<sup>111</sup> Joint Ex. 12 at 35; Joint Ex. 11 at 10.

<sup>112</sup> Joint Ex. 12 at 36; Joint Ex. 11 at 29-30.

<sup>113</sup> Tr. at 67 (Mother); Tr. at 282-283 (\*\*\*) ; Tr. at 1146-1148, 1159-1163, 1182-1183 (\*\*\*) ; Joint Ex. 17 at 10-12; Joint Ex. 18 at 37.

<sup>114</sup> Tr. at 1205, 1214 (\*\*\*) .

<sup>115</sup> Tr. at 592-594 (\*\*\*) ; Joint Ex. 14.

<sup>116</sup> Tr. at 227, 267-278, 326 (\*\*\*) ; Tr. at 180, 1190-1191, 1200-1201, 1207, 1216-1217, 1219 (\*\*\*) ; Joint Ex. 14 at 4, 8, 14-16, 20-23. The hearing officer gives little weight to the independent educational diagnostician's testimony or expert report. Petitioner Ex. 7.

<sup>117</sup> Respondent Ex. 2 at 26, 28-30.

<sup>118</sup> Respondent Ex. 2 at 41, 46-48.

<sup>119</sup> Joint Ex. 12 at 2-9, 37-38, 66-128, 130-176; Joint Ex. 21 at 1-3.



- a. The Adaptive Behavior goals required Student to \*\*\* with 100% accuracy when given a verbal prompt by staff; \*\*\*, \*\*\*, \*\*\*, as selected by Student and Mother.
  - b. Academic areas addressed were Language Arts, Reading, Social Studies, Science, Mathematics, \*\*\*, and \*\*\*. One of the Reading goals required Student to access \*\*\*-grade level reading material. The goals required Student to work independently.
  - c. The \*\*\* goal required \*\*\* provided by the District. The goal was to be implemented by the District's LSSP and evaluated through \*\*\* contact.<sup>121</sup>
  - d. Depending on the goal, progress was to be evaluated through a combination of observations, work samples and portfolios, teacher made tests, teacher reports and feedback, and discipline records.
61. The IEP contained modifications and accommodations, including reduced assignments, adapted materials, providing Student with \*\*\*, \*\*\*, and behavior management.<sup>122</sup>
62. Student was to take the STAAR \*\*\* \*\*\*.<sup>123</sup>

### **Behavior History**

63. The following information about Student's behavior was available to the ARDC between March \*\*\*, 2016, and May \*\*\*, 2016:
- a. Between \*\*\*, 2015, and December \*\*\*, 2015, Student was suspended \*\*\* times for a total of \*\*\* days, including \*\*\*.<sup>124</sup>
  - b. Student was restrained \*\*\* in \*\*\* 2016 and \*\*\* times in \*\*\* 2016 for \*\*\* and \*\*\*, and \*\*\* in \*\*\* 2016 for \*\*\*.<sup>125</sup>
  - c. In the 2015-2016 school year, school personnel called Mother between \*\*\* and \*\*\* times either to help calm Student down at school or \*\*\* due to Student's behavior.<sup>126</sup>

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<sup>120</sup> Joint Ex. 12 at 12, 14-19, 22-23. The hearing officer did not include summer goals in the list because Student did not attend school in the summer of 2016. Tr. at 67 (Mother).

<sup>121</sup> Tr. at 231-233, 294-297 (\*\*\*) ; Joint Ex. 11 at 15; Respondent Ex. 1.

<sup>122</sup> Joint Ex. 12 at 24-25.

<sup>123</sup> Joint Ex. 12 at 26-28.

<sup>124</sup> Tr. at 504 (\*\*\*) ; Joint Ex. 11 at 13; Joint Ex. 12 at 133-135, 142, 144, 151, 157, 161, 167, 170.

<sup>125</sup> Tr. at 504-507, 618-621 (\*\*\*) ; Joint Ex. 12 at 133-135, 138-143, 141-144, 150-157, 160-176.

<sup>126</sup> Tr. at 64 (Mother).

64. When Student is engaged in \*\*\* or \*\*\*, Student either is not accessing the curriculum while \*\*\* or is not within Student's current learning environment and is not accessing academic learning.<sup>127</sup>
65. Student made behavioral progress during the 2015-2016 school year through the use of \*\*\*. A \*\*\* visited the classroom to help the special education teacher plan for a successful \*\*\* and advised Student's special education teacher that she was doing a great job. The special education teacher implemented \*\*\* training through the research-based "\*\*\*\*" program to meet Student's goal. \*\*\* behavior specialists will continue to work with the District to make suggestions for Student.<sup>128</sup>

### **Revised BIP**

66. Based on Student's 2016 FIE, information from earlier ARDC meetings, and Student's continuously revised IEP goals and objectives, the District LSSP recommended revision of Student's BIP.<sup>129</sup> \*\*\* was added under "Inappropriate Behaviors." \*\*\* behavior was not added to Student's BIP.<sup>130</sup>
67. Student's revised BIP was to be in place until \*\*\*, 2016.<sup>131</sup>
- a. Copies of the revised BIP were distributed to those responsible for implementing the plan: the campus administrator, Student's general education teachers, Student's special education teacher, special education counselor, Mother, custodial staff, cafeteria staff, and paraprofessionals.
  - b. The targeted behaviors were noncompliance with staff directives; \*\*\* (\*\*\*); peer conflicts (\*\*\*); and \*\*\* (\*\*\*).
  - c. Ways to address each targeted behavior were listed in the categories of classroom environment, classroom strategies, \*\*\*, \*\*\* training, and consequences reasonably calculated to improve behavior.
  - d. Staff was to manage Student's behavior in all Student's classes by following the BIP and through clearly defined limits, frequent reminders of the rules, positive

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<sup>127</sup> Tr. at 351, 455 (\*\*\*)

<sup>128</sup> Tr. at 563-564, 587 (\*\*\*) \*\*\* was added to the BIP in April 2016. Tr. at 151 (\*\*\*); Joint Ex. 12 at 37, 45-50; Joint Ex. 27 at 1-11, 17-27.

<sup>129</sup> Tr. at 247-251 (\*\*\*) The District's LSSP did not conduct an FBA because the ARDC was still waiting on the FBA to be conducted by an independent educational diagnostician as requested by the ARDC in December 2015. The independent educational diagnostician presented a report in April 2016 that did not include an FBA. Joint Ex. 14.

<sup>130</sup> Tr. at 151, 156 (\*\*\*); Tr. at 350, 397-398 (\*\*\*); Tr. at 507 (\*\*\*); Joint Ex. 12 at 37, 45-50; Joint Ex. 27 at 1-11, 17-27.

<sup>131</sup> Joint Ex. 12 at 45-50.

reinforcement, frequent eye contact/proximity control, frequent breaks, private discussion about behavior, in-class timeout, opportunity to help the teacher, \*\*\*, supervision during \*\*\* activities, structured and predicted visual schedules, relationship building, and use of the \*\*\*.<sup>132</sup>

68. Staff was provided copies of and correctly implemented Student's BIP during the 2015-2016 school year.<sup>133</sup>

#### **Least Restrictive Environment**

69. In a meeting that began on March \*\*\*, 2016, and concluded on May \*\*\*, 2016, the ARDC correctly determined that, for the remainder of the spring 2016 semester, the LRE for Student's core subjects was in the self-contained \*\*\* classroom with \*\*\* and \*\*\* in the general education setting.<sup>134</sup>

- a. In a general education setting, Student's behavior impedes Student's learning and the learning of others due to problem behaviors of \*\*\*.<sup>135</sup>
- b. TEKS objectives for Student's assigned grade level exceed Student's present level of educational performance; therefore, Student requires instruction based on present competencies which are significantly below current grade level placement.<sup>136</sup>

70. The ARDC correctly determined on May \*\*\*, 2016, that the LRE from the beginning of the 2016-2017 school year until the annual ARDC meeting on \*\*\*, 2016, was in the \*\*\* classroom for core subjects and in general education for \*\*\* and \*\*\*.<sup>137</sup>

#### **Implementation of IEP**

71. By April \*\*\*, 2016, Student had mastered the \*\*\*/\*\*\* goal; had mastered one short-term objective and made progress on the second short-term objective in Student's English-Language Arts goal; made no progress on Student's Social Studies goal; mastered one of the short-term objectives and made progress on the remaining three short-term objectives for Student's Reading goal; and mastered Student's Science and Math goals.<sup>138</sup>

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<sup>132</sup> The \*\*\* is not described. Joint Ex. 12 at 25.

<sup>133</sup> Tr. at 225-226, 265-266 (\*\*\*); Tr. at 498-503, 521-531, 612-617 (\*\*\*); Joint Ex. 7 at 15; Joint Ex. 12 at 136-176; Joint Ex. 26.

<sup>134</sup> Joint Ex. 12 at 29-34, 38.

<sup>135</sup> Tr. at 233 (\*\*\*); Joint Ex. 11 at 15, 25.

<sup>136</sup> Tr. at 1226 (\*\*\*).

<sup>137</sup> Joint Ex. 12 at 29-34, 38.

<sup>138</sup> Tr. at 561 (\*\*\*); Respondent Ex. 3 at 9-14.

72. By June \*\*\*, 2016, Student's progress on Student's IEP goals and objectives was sufficient for Student to achieve all of the revised IEP goals by the next annual ARDC meeting date. Student's absences affected Student's progress for the progress report period that began on April \*\*\*, 2016.<sup>139</sup>
73. Student's special education teacher routinely communicated with Mother about Student's progress.<sup>140</sup>
74. Student's IEP was correctly implemented in the 2015-2016 school year.<sup>141</sup>

**\*\*\* and absences**

75. Student was \*\*\*. Student's \*\*\*. \*\*\*. No specific school recommendations were made.<sup>142</sup> \*\*\* in particular has helped Student.<sup>143</sup>
76. Mother told school personnel about Student's \*\*\* and Student's \*\*\*.<sup>144</sup>
77. On \*\*\*, 2016, Student began \*\*\*. Dr. \*\*\* wrote a note excusing Student from school from \*\*\*, 2016, for \*\*\*; another note recommending Student remain out of school until after the \*\*\*\*\*, 2016 ARDC meeting; a note on \*\*\* \*\*\*, 2016, notifying the District that Student's \*\*\*; and finally a \*\*\*, 2016 note recommending that Student \*\*\*.<sup>145</sup>
78. When Student was absent \*\*\* 2016, Student's special education teacher complied with Mother's request for work to be sent home. However the work was never returned to school.<sup>146</sup>
79. Student returned to school during the \*\*\* \*\*\* for \*\*\* days in \*\*\*. On \*\*\*, 2016, \*\*\*, Student was restrained for \*\*\* \*\*\*.<sup>147</sup>

**D. Summer of 2016**

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<sup>139</sup> Joint Ex. 13; Joint Ex. 21 at 27-36. Some of the goals were to be in effect from May \*\*\* to July \*\*\*, 2016. Other goals were to be in effect from August \*\*\* to \*\*\*, 2016, after the date of the progress report.

<sup>140</sup> Tr. at 594-595 (\*\*\*); Joint Ex. 27.

<sup>141</sup> Tr. at 521-524, 554-555, 596-597 (\*\*\*); Joint Ex. 7 at 26-31; Joint Ex. 27; Joint Ex. 29; Joint Ex. 31.

<sup>142</sup> Tr. at 303-304 (\*\*\*). Student's \*\*\*. Tr. at 305-307 (\*\*\*). The District requested \*\*\* but they were not provided. Tr. at 230-231 (\*\*\*); Joint Ex. 11 at 14; Joint Ex. 12 at 111-124.

<sup>143</sup> Tr. at 56-58, 103 (Mother).

<sup>144</sup> Tr. at 61-62 (Mother). Student has been \*\*\*.

<sup>145</sup> Tr. at 188-189 (\*\*\*); Joint Ex. 12 at 97, 100-109, 126-129.

<sup>146</sup> Tr. at 586 (\*\*\*).

<sup>147</sup> Tr. at 158 (\*\*\*); Tr. at 585, 608-609, 618-623 (\*\*\*); Joint Ex. 12 at 141-143, 150-152, 157, 160-176; Joint Ex. 26 at 35.

80. Because Student had missed \*\*\* days of the 2015-2016 school year, the ARDC offered compensatory summer services and developed summer IEP goals.<sup>148</sup>
81. Mother did not send Student to school in the summer, asserting Student needed a break from school.<sup>149</sup>

**E. \*\*\* Grade (August 2016 - November 2016)**

82. Student's annual ARDC meeting began on November \*\*\*, 2016, and concluded on November \*\*\*, 2016.<sup>150</sup>

**Development of IEP**

83. In revising Student's IEP, the ARDC considered Student's most recent FIE, IEEs, the BCBA's recommendations, outside service provider or agency information, IEP progress and update data, classroom observations, PLAAFPs, \*\*\* services, \*\*\*, the BIP, physician records, attendance and discipline records, District assessment data, and information from Mother, Student, and teachers.<sup>151</sup>
84. The ARDC drafted measurable annual IEP goals, including \*\*\*\* goals; nine academic goals that require Student to work at the \*\*\*-grade level and/or independently; a Study Skills goal; a \*\*\* goal; and four Adaptive Behavior goals, including one to address Student's \*\*\* by requiring Student to \*\*\*.<sup>152</sup>
- a. The goals covered or coincided with the recommendations made in the IEE by the independent psychologist, for the most part, and are appropriate for Student's academic functioning level.<sup>153</sup>
  - b. The Adaptive Behavior goals require Student to \*\*\* with 100% accuracy when given a verbal prompt by staff; \*\*\*, \*\*\*, \*\*\* \*\*\* by Student and Mother.
85. The IEP contained modifications and appropriate accommodations:<sup>154</sup>
86. The IEP provided the related services of \*\*\* and \*\*\*.<sup>155</sup>

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<sup>148</sup> Joint Ex. 12 at 38, 130-131; *see, e.g.*, Joint Ex. 21 at 11-36 (absences from August \*\*\*, 2015, through June \*\*\*, 2016).

<sup>149</sup> Tr. at 67 (Mother); *see also* Tr. at 823 (\*\*\*).

<sup>150</sup> Joint Ex. 18.

<sup>151</sup> Joint Ex. 18 at 2-10, 37, 42, 58, 82-103, 108-113; Joint Ex. 21 at 4-10, 37-43; Joint Ex. 24 at 3-21.

<sup>152</sup> Joint Ex. 18 at 11-22.

<sup>153</sup> Tr. at 1166, 1189 (\*\*\*); Joint Ex. 17 at 10-11; Joint Ex. 18 at 11-22.

<sup>154</sup> Tr. at 1168 (\*\*\*); Joint Ex. 18 at 23-25.

87. Student was to be provided \*\*\* throughout the school day.<sup>156</sup>
88. Student's IEP addresses the frequent repetition, rehearsal, and practice required for Student to learn.<sup>157</sup>

### Evaluations

89. The ARDC reviewed the IEEs in \*\*\* and psychology, and adopted some of the recommendations.<sup>158</sup> The OT IEE concluded, as did the District's FIE, that Student did not need OT as a related service.<sup>159</sup> The psychologist's IEE is consistent with the psychological evaluation contained in the District's FIE.<sup>160</sup>
90. A December \*\*\*, 2016 \*\*\* \*\* evaluation with a focus on behavioral assistance concluded Student does not need \*\*\* \*\* services.<sup>161</sup>

### Behavior History and BIP

91. In the summer of 2016, Student's special education teacher received behavior training, including restraint training, for students with \*\*\*.<sup>162</sup>
92. Between August \*\*\* and \*\*\*, 2016, all of Student's teachers received a copy of Student's IEP as revised by the March \*\*\*, 2016 ARDC. \*\*\* received a copy on September \*\*\*, 2016.<sup>163</sup>
93. At the beginning of the school year, the District's LSSP trained teachers and staff on Student's BIP.<sup>164</sup>
94. Student's special education teacher trained the classroom paraprofessional on the BIP.<sup>165</sup>

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<sup>155</sup> Tr. at 284-285 (\*\*\*) ; Tr. at 595 (\*\*\*) ; Tr. at 832, 859, 887-889 (\*\*\*) ; Joint Ex. 18 at 30-31, 38; Joint Ex. 24 at 18; Joint Ex. 27 at 12-15; Joint Ex. 30 at 184. Mother agreed with the goals developed by the ARDC. Tr. at 99-102 (Mother).

<sup>156</sup> Joint Ex. 18 at 49-51.

<sup>157</sup> Tr. at 281-281 (\*\*\*) ; Tr. at 1151-1152 (\*\*\*) ; Joint Ex. 17 at 11.

<sup>158</sup> Joint Ex. 14 at 115; Joint Ex. 16 at 6; Joint Ex. 17 at 10-12; Joint Ex. 18 at 37.

<sup>159</sup> Tr. at 88-89 (Mother); Tr. at 278-279 (\*\*\*) ; Joint Ex. 15 at 6; Joint Ex. 18 at 37.

<sup>160</sup> Tr. at 67 (Mother); Tr. at 282-283 (\*\*\*) ; Tr. at 1146-1148, 1159-1163 (\*\*\*) ; Joint Ex. 17 at 10-12; Joint Ex. 18 at 37.

<sup>161</sup> Joint Ex. 18 at 1, 37, 43-44; Joint Ex. 20.

<sup>162</sup> Tr. at 833-835 (\*\*\*) .

<sup>163</sup> Tr. at 863 (\*\*\*) ; Joint Ex. 12 at 24-25; Joint Ex. 33 at 1-8.

<sup>164</sup> Tr. at 164-166 (\*\*\*) .

<sup>165</sup> Tr. at 810-813 (\*\*\*) .

95. In September 2016, the District retained the services of a BCBA for 2 hours per month through the 2016-2017 school year. The BCBA provided recommendations to the ARDC and continues to provide services to Student and District staff, and \*\*\* to Mother.<sup>166</sup> The District has made and continues to make changes based on the BCBA's recommendations, including changes made to Student's BIP in November 2016.<sup>167</sup>
- a. The BCBA provided Student's special education teacher with a revised \*\*\* that was used beginning November \*\*\*, 2016, and contained \*\*\*: \*\*\*. A \*\*\*\*\* was added on November \*\*\*, 2016.<sup>168</sup> The revised \*\*\* has been effective for Student because Student understands the behaviors and consequences better than Student did under the previous \*\*\*. Student can more quickly earn tangible reinforcements and breaks, when Student requests them.<sup>169</sup>
  - b. The BCBA advises that Student not be presented with the same demand if Student's behavior escalates. Depending on the situation, the demand should be temporarily withdrawn and Student should be given a break or cool-down time before the demand is presented again.<sup>170</sup>
  - c. Pursuant to the BCBA's recommendation, Student will be \*\*\* if Student \*\*\* so that engaging in problem behavior does not mean Student \*\*\*.<sup>171</sup>
96. Student's behavior records from the 2015-2016 school year could be used as a baseline for \*\*\*, \*\*\*, and \*\*\*.<sup>172</sup>
97. Since the beginning of the year, Student was \*\*\*; \*\*\* on November \*\*\*, 2016, and November \*\*\*, 2016; and was convinced to \*\*\* on another day after speaking on the telephone with Mother.<sup>173</sup>
98. Student was restrained \*\*\* this year, for \*\*\* on \*\*\*, 2016, the date of Student's \*\*\*.<sup>174</sup>
99. Neither the special education teacher nor the paraprofessional has restrained Student in the 2016-2017 school year.<sup>175</sup>

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<sup>166</sup> Tr. at 630-631, 678-679, 728-732, 742 (\*\*\*); Tr. at 844-846, 894-895 (\*\*\*); Joint Ex. 24 at 3-8, 18, 22.

<sup>167</sup> Tr. at 680, 683, 697-703, 1170-1171 (\*\*\*); Joint Ex. 18 at 44-49; Joint Ex. 19 at 15-16; Joint Ex. 24 at 6-10.

<sup>168</sup> Tr. at 673-675 (\*\*\*); Tr. at 837-844, 880-885 (\*\*\*); Joint Ex. 24 at 9-17; Joint Ex. 30 at 224; *see former* \*\*\* samples at Joint Ex. 28 and Joint Ex. 30 at 193-195.

<sup>169</sup> Tr. at 847-848, 867-876, 885-886 (\*\*\*); Joint Ex. 30 at 225.

<sup>170</sup> Tr. at 692, 1158-1159, 1181 (\*\*\*); *see also* Tr. at 1279-1280 (\*\*\*).

<sup>171</sup> Tr. at 741-742 (\*\*\*).

<sup>172</sup> Tr. at 733-739 (\*\*\*); Joint Ex. 24 at 20.

<sup>173</sup> Tr. at 761-764 (\*\*\*); Joint Ex. 18 at 37, 101-102.

<sup>174</sup> Tr. at 855-857 (\*\*\*); Joint Ex. 19 at 36-56.

100. A comparison of data from the 2015-2016 and 2016-2017 school years shows a decrease in \*\*\* towards staff and peers, \*\*\*, \*\*\*, and restraints.<sup>176</sup>
101. The ARDC members, including Mother, agreed to the BIP revisions.<sup>177</sup>

### **Least Restrictive Environment**

102. At the beginning of the school year, the LRE for all of Student's classes was in the self-contained special education classroom except for \*\*\* \*\*\*, \*\*\* \*\*\*, and \*\*\*, \*\*\*, and \*\*\* provided in the general education setting.<sup>178</sup>
103. Student's special education teacher or paraprofessional \*\*\* \*\*\* classroom and \*\*\* in those classrooms.<sup>179</sup>
104. In November 2016, the ARDC decided to move Student out of \*\*\* classes into the \*\*\* classroom where Student would have better access to the \*\*\* \*\*\*.<sup>180</sup> Student continued to take \*\*\* and \*\*\* in the general education setting.
105. \*\*\* \*\*\* classroom with a teacher and paraprofessional could reinforce Student's attention-seeking behavior. However, there is no \*\*\* in the \*\*\* classroom; Student could receive even more attention for problem behavior in a different setting with \*\*\*.<sup>181</sup>

### **F. \*\*\* Grade (December 2016 – January 2017)**

106. Student was absent \*\*\* of December 2016 while Dr. \*\*\* \*\*\*. Student stayed home so Mother could \*\*\*. Student returned to school on December \*\*\*, 2016.<sup>182</sup>
107. The ARDC met on December \*\*\*, 2016, following Student's \*\*\*, 2016 \*\*\*, to consider changes to Student's goals and objectives, and Student's schedule of services.<sup>183</sup>

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<sup>175</sup> Tr. at 855-857 (\*\*\*).

<sup>176</sup> Tr. at 171-172, 308-309 (\*\*\*); Joint Ex. 12 at 163, 167, 172; Joint Ex. 18 at 58; Joint Ex. 26; Joint Ex. 28.

<sup>177</sup> Tr. at 113-116, 119 (\*\*\*); Pet. Ex. 3 at 35-36; Joint Ex. 18 at 44-49, 58.

<sup>178</sup> Tr. at 861-862 (\*\*\*); Joint Ex. 18 at 10, 30-39.

<sup>179</sup> Tr. at 863-864 (\*\*\*).

<sup>180</sup> Tr. at 284-285 (\*\*\*); Tr. at 595 (\*\*\*); Tr. at 832, 859, 887-889 (\*\*\*); Joint Ex. 18 at 30-31, 38; Joint Ex. 24 at 18; Joint Ex. 27 at 12-15; Joint Ex. 30 at 184.

<sup>181</sup> Tr. at 773-774 (\*\*\*).

<sup>182</sup> Respondent Ex. 2 at 56; Joint Ex. 19 at 57.

<sup>183</sup> Tr. at 71 (Mother); Tr. at 159-160 (\*\*\*); Joint Ex. 19 at 1-2, 36-57.



108. The ARDC reached agreement on the revisions to Student's IEP except for placement. The District members of the ARDC did not agree with Mother that residential educational placement was the LRE appropriate for Student.<sup>184</sup>
109. The ARDC decided Student should receive \*\*\* instruction in the \*\*\* classroom. Mother agreed with changes to Student's IEP but disagreed with the District's denial of private placement for Student.<sup>185</sup>
110. Mother waived the right to reconvene and provide a written statement of disagreement as offered by the District.<sup>186</sup>

### Revisions to IEP

111. In addition to considering information updated since the November \*\*\*, 2016 ARDC meeting, the ARDC considered input from \*\*\* representatives. With the exception of \*\*\* and \*\*\*, the services provided at \*\*\* are very similar to the services set forth in Student's IEP.<sup>187</sup>
112. Student was to attend a \*\*\* class beginning January \*\*\*, 2017, with \*\*\*.<sup>188</sup> The addition of the \*\*\* class was made in response to Mother's concern about Student's \*\*\* due to the change in placement.<sup>189</sup> Student's current level of social functioning is consistent with Student's mental age.<sup>190</sup>
113. The ARDC added five measurable annual goals to Student's November \*\*\*, 2016 IEP, to be in effect January \*\*\*, 2017, through July \*\*\*, 2017. Three \*\*\* goals, a \*\*\* goal, and \*\*\* goal were added.<sup>191</sup> The goals are appropriate for Student's academic functioning level.<sup>192</sup>

### Behavior History and BIP

114. The psychological evaluation contained in the District's February 2016 FIE was adequate to revise Student's BIP without the FBA that was to have been prepared by an independent evaluator.<sup>193</sup>

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<sup>184</sup> Joint Ex. 19 at 8.

<sup>185</sup> Tr. at 319-320 (\*\*\*) ; Joint Ex. 19 at 7-8, 28.

<sup>186</sup> Tr. at 177-178 (\*\*\*) ; Joint Ex. 19 at 2- 3, 28.

<sup>187</sup> Tr. at 291-293 (\*\*\*) ; Tr. at 1077 (\*\*\*) ; Joint Ex. 19 at 2, 29; Joint Ex. 21 at 43-44; Joint Ex. 22.

<sup>188</sup> Joint Ex. 19 at 2, 28.

<sup>189</sup> Joint Ex. 19 at 28.

<sup>190</sup> Joint Ex. 17 at 10.

<sup>191</sup> Joint Ex. 19 at 2, 22-26.

<sup>192</sup> Tr. at 1189 (\*\*\*) .

<sup>193</sup> Tr. at 326 (\*\*\*) ; Joint Ex. 19 at 32-57; Joint Ex. 28.

115. Staff correctly implemented Student's BIP from August \*\*\*, 2016, through January \*\*\*, 2017.<sup>194</sup>
- a. Student has an upward trend line in the \*\*\*, indicating an increase in Student's rate of \*\*\* or compliance and engaging in more appropriate behavior throughout the day.<sup>195</sup>
  - b. Petitioner is engaging less in problem behavior and following the special education teacher's directions.<sup>196</sup>
  - c. Since November \*\*\*, 2016, there has been a noticeable decrease in the number of times the \*\*\* has been called to Student's classroom to respond to behavior issues and an improvement in Student's behavior.<sup>197</sup>
116. Staff correctly followed Student's BIP on \*\*\*, 2016, the date Student \*\*\*.<sup>198</sup> Student's \*\*\* teacher restrained Student in the first restraint for the 2016-2017 school year, demonstrating an improvement in \*\*\* since the 2015-2016 school year, when Student was restrained more times.<sup>199</sup>
117. Since November \*\*\*, 2016, Student's \*\*\* behavior has stopped and Student's \*\*\* behavior has improved.<sup>200</sup> The natural consequence of \*\*\* decreased Student's \*\*\* behavior.<sup>201</sup>
118. Student's BIP did not allow Student to escape the curriculum. Instead, Student is making academic and nonacademic progress.<sup>202</sup>
119. Student \*\*\* in January 2017 but \*\*\* and continued throughout the day, an improvement in the previous outcome of Student's \*\*\* behavior.<sup>203</sup>
120. Since changing the \*\*\* in November 2016, as recommended by the BCBA, Student has stopped \*\*\* and has shown a "drastic change" in following directions.<sup>204</sup>

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<sup>194</sup> Tr. at 264-265, 317, 330 (\*\*\*) ; Tr. at 770 (\*\*\*) ; Tr. at 360, 363, 374 (\*\*\*) ; Joint Ex. 19 at 32-57; Joint Ex. 28; *see also* Joint Ex.18 at 83-103.

<sup>195</sup> Tr. at 713, 716, 724-725, 746, 750, 753, 759-761, 766-767 (\*\*\*) ; Tr. at 860-861 (\*\*\*) ; *see also* Tr. at 806 (\*\*\*) .

<sup>196</sup> Tr. at 746 (\*\*\*) ; Tr. at 886 (\*\*\*) .

<sup>197</sup> Tr. at 790, 806 (\*\*\*) .

<sup>198</sup> Tr. at 176 (\*\*\*) ; Tr. at 776-801 (\*\*\*) ; Joint Ex. 18 at 44-48; Joint Ex. 19 at 41-44, 50-52.

<sup>199</sup> Tr. at 302 (\*\*\*) .

<sup>200</sup> Tr. at 298-302 (\*\*\*) .

<sup>201</sup> Tr. at 1156 (\*\*\*) .

<sup>202</sup> Tr. at 258-259 (\*\*\*) .

<sup>203</sup> Tr. at 896 (\*\*\*) .

121. Student has only had one restraint in 2016-2017 and school personnel have stopped calling Mother to pick Student up for behavior issues.<sup>205</sup>
122. Between December \*\*\*, 2016, and January \*\*\*, 2017, all of Student's teachers received a copy of Student's BIP as developed at the November \*\*\*, 2016 annual ARDC meeting.<sup>206</sup>

### **Implementation of IEP**

123. Between December \*\*\* and \*\*\*, 2016, \*\*\* administrators and all of Student's teachers received a copy of Student's IEP as revised by the December \*\*\*, 2016 ARDC.<sup>207</sup>
124. Student is making the academic and nonacademic progress to be expected within Student's capabilities as a student with \*\*\* and adaptive behavior deficits.<sup>208</sup>
- a. After Student was moved from \*\*\* classes to the \*\*\* classroom in December 2016, Student's special education teacher continued teaching Student the \*\*\* classroom content.<sup>209</sup>
  - b. Student has mastered some of the goals from the November \*\*\*, 2016 ARDC meeting. Now that Student is in the \*\*\* classroom full time, some of Student's IEP goals need to be revised to better meet Student's needs.<sup>210</sup>
  - c. At the beginning of school year, Student required \*\*\*. Student read at the lower \*\*\*-grade level. In December 2016, Student tested at the reading level for upper \*\*\* grade, the beginning of \*\*\* grade, an improvement.<sup>211</sup> Student's reading level is commensurate with Student's IQ.<sup>212</sup>
  - d. Student's \*\*\* skills are improving.<sup>213</sup>
125. Student's IEP was correctly implemented in the 2016-2017 school year.<sup>214</sup>

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<sup>204</sup> Tr. at 872-876 (\*\*\*).

<sup>205</sup> Tr. at 325 (\*\*\*).

<sup>206</sup> Joint Ex. 33 at 18-24.

<sup>207</sup> Joint Ex. 33 at 9-17.

<sup>208</sup> Tr. at 286-287, 308 (\*\*\*); Tr. at 1136 (\*\*\*).

<sup>209</sup> Tr. at 850 (\*\*\*).

<sup>210</sup> Tr. at 889-890 (\*\*\*).

<sup>211</sup> Tr. at 891-892 (\*\*\*).

<sup>212</sup> Tr. at 1136 (\*\*\*).

<sup>213</sup> Tr. at 892 (\*\*\*).

<sup>214</sup> Tr. at 330-331 (\*\*\*); Tr. at 827-828 (\*\*\*); *see, e.g.*, data collection sheets. Joint Ex. 30; Joint Ex. 32.

### Least Restrictive Environment

126. The ARDC considered continued placement in general education \*\*\* and \*\*\* and \*\*\* classes. Although \*\*\* would typically result in a placement in DAEP, the \*\*\* \*\*\* did not recommend a DAEP assignment. After properly considering the LRE service alternatives, the ARDC decided Student would receive all of Student's instruction in the \*\*\* classroom.<sup>215</sup>
127. In December 2016, following Student's \*\*\*, Student was moved to the \*\*\* classroom for all instruction. The new placement allows Student's special education teacher to better implement Student's new reinforcement system created by the BCBA with whom the District has a contract, provide better supported transitioning, provide lesson support, and allows Student to have less negative peer-to-peer interaction. Student's special education teacher can teach Student appropriate times to socially converse with friends and teach Student \*\*\*.<sup>216</sup>
- a. Student continues to interact with general education peers \*\*\*.<sup>217</sup>
  - b. Because Mother wanted a \*\*\* for Student, a \*\*\*, reinforcing the behavior supports.<sup>218</sup>
128. The \*\*\* classroom is the LRE because Student needs a decrease in academic demands consistent with evaluation results in an effort to decrease frustration; a decreased number of \*\*\*; an increase in the intensity of \*\*\* and \*\*\* instruction; an increase in structure; and increased consistency in behavior interventions.<sup>219</sup>
129. To learn, Student needs a quiet environment with minimal distractions; individual instruction with a lot of repetition; visual and physical cues; breaks from sitting; communication between teacher and Mother; natural consequences for maladaptive behavior; praise as positive reinforcement; and limited access or exposure to \*\*\*.<sup>220</sup>
130. The \*\*\* classroom has all the supports Student needs to make academic and nonacademic progress.<sup>221</sup>

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<sup>215</sup> Joint Ex. 19 at 2-6, 28-29.

<sup>216</sup> Tr. at 815-819 (\*\*\*); Joint Ex. 19 at 2.

<sup>217</sup> Tr. at 893-894 (\*\*\*).

<sup>218</sup> Tr. at 893-894 (\*\*\*).

<sup>219</sup> Joint Ex. 19 at 28-29.

<sup>220</sup> Tr. at 1151-1157 (\*\*\*).

<sup>221</sup> Tr. at 311 (\*\*\*); Joint Ex. 19 at 28-29.

**G. Appropriateness of Private Educational Placement**

131. Student does not require residential educational placement in order to receive a FAPE. Student's IEP is reasonably calculated to result in academic and nonacademic progress and can be implemented at the District \*\*\* that Student attends. Student's home campus and community is a less restrictive environment than a residential facility serving only students with severe behavioral challenges.<sup>222</sup>
132. Student's severely \*\*\* behavior has decreased since Student's placement for all instruction in the \*\*\* classroom in December 2016. Student does not need the more restrictive environment of residential educational placement for Student's behavior to continue to improve.<sup>223</sup>

**V. APPLICABLE LAW, ANALYSES, AND CONCLUSIONS****A. The IDEA and Its Implementing Regulations**

Under the IDEA, and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet state standards (including IDEA requirements); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in accordance with a properly developed IEP.<sup>224</sup>

**B. Denial of FAPE**

Petitioner claims the District did not provide Student a FAPE by failing to timely and appropriately evaluate Student; failing to develop and implement appropriate IEP goals, objectives, and behavioral support for Student; and by failing to educate Student in the LRE. Petitioner further asserts that, because the District denied Student a FAPE, private placement at \*\*\* is appropriate. The evidence does not support findings in Petitioner's favor.

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<sup>222</sup> Joint Ex. 18 at 58; Joint Ex. 19 at 28.

<sup>223</sup> Tr. at 311 (\*\*\*); Tr. at 753, 766-769, 771-772 (\*\*\*); Tr. at 898 (\*\*\*).

<sup>224</sup> 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

The U.S. Supreme Court has ruled that a FAPE requires tailoring an education to the unique needs of the child with a disability by means of an IEP that meets a specific standard.<sup>225</sup> The Fifth Circuit has summarized the *Rowley* standard:

[An IEP] need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit Student 'to benefit' from the instruction. In other words, the IDEA guarantees only a 'basic floor of opportunity' for every disabled child, consisting of 'specialized instruction and related services which are individually designed to provide educational benefit.' Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or *de minimis*; rather, an IEP must be 'likely to produce progress, not regression or trivial educational advancement.' In short, the educational benefit that an IEP is designed to achieve must be 'meaningful.' (internal citations omitted).<sup>226</sup>

The Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the LRE; (3) the services are provided in a coordinated and collaborative manner by the key "stakeholders;" and (4) positive academic and nonacademic benefits are demonstrated.<sup>227</sup>

The evidence shows Student received a FAPE in accordance with the IDEA requirements enumerated above and the two-prong test established by the U.S. Supreme Court: (1) the District complied with IDEA procedures and (2) Student's IEP was reasonably calculated to enable Student to receive educational benefits.<sup>228</sup> Under *Rowley*, when this two-part test is satisfied, a school district has complied with the obligation imposed by Congress, and the courts can require no more.

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<sup>225</sup> *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181; 102 S.Ct. 3034, 3038 (1982).

<sup>226</sup> *Bobby R.*, 200 F.3d at 347, citing to *Cypress-Fairbanks*, 118 F.3d at 247-48.

<sup>227</sup> *Bobby R.*, 200 F.3d at 347-348, citing to *Cypress-Fairbanks*, 118 F.3d at 253.

<sup>228</sup> *Rowley*, 458 U.S. 176, 181; 102 S.Ct. 3034, 3038 (1982).

**1. First Prong of *Rowley*: The District complied with IDEA procedures**

Petitioner alleges the District did not comply with IDEA procedures when it failed to provide timely and appropriate evaluations of Student. A procedural violation may amount to a denial of FAPE only if the violation: (1) impeded the student's right to a FAPE; (2) significantly impeded a parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or (3) caused a deprivation of educational benefit.<sup>229</sup> As discussed below, the evidence shows the District met the first prong of the *Rowley* test.

**a. The District timely and appropriately evaluated Student in all areas of Student's suspected disability**

The District was required to re-evaluate Student either at Mother's request, a teacher's request, or once it determined that Student's educational or related services needs, including improved academic achievement and functional performance, warranted a re-evaluation. Such a re-evaluation must occur not more than once a year or less than once every 3 years, unless a school district and parent agree otherwise. The re-evaluation must be conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311.<sup>230</sup>

Petitioner argues the District did not conduct timely and appropriate evaluations of Student despite being on notice as to Student's medical diagnoses, deteriorating behavior, and Mother's repeatedly expressed concerns, thus depriving Student of a FAPE.<sup>231</sup>

Respondent asserts the District conducted timely and appropriate evaluations as circumstances warranted. Once a suspicion of \*\*\* started to emerge in the fall of 2015, the District timely conducted an FIE, including a psychological evaluation, and timely identified an additional eligibility of \*\*\*.<sup>232</sup>

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<sup>229</sup> 34 C.F.R. § 300.513(a)(2).

<sup>230</sup> 34 C.F.R. § 300.303(a), (b).

<sup>231</sup> See, generally, Petitioner's Post-Hearing Brief at 47-52. Petitioner's counsel clarified at the due process hearing that the concern is the timeliness rather than the appropriateness of the evaluations. Tr. at 192-193.

<sup>232</sup> Respondent's Closing Argument at 29, citing to Tr. at 245-247.

**i. February \*\*\*, 2016 FIE**

Petitioner did not prove the February \*\*\*, 2016 FIE was untimely or inappropriate. The evidence shows the District did not suspect Student might have an unidentified disability until the fall of 2015. Had Student demonstrated patterns of \*\*\* or \*\*\*, rather than isolated incidents before then, the District could have been on notice that Student had an unidentified disability. But prior to December 2015, none of Student's teachers and no ARDC member, including Mother, had indicated a suspicion that Student might have an unidentified disability. When the ARDC suspected Student might have an additional disability, an FIE was conducted. The FIE, requested in December 2015, was completed in February 2016, on time.<sup>233</sup>

In addition, Petitioner presented no evidence to indicate the FIE was incomplete or insufficient, or that it did not comply with IDEA requirements. The hearing officer finds that the FIE does, in fact, comply with all IDEA requirements.<sup>234</sup> Specifically, Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information from Mother, which enabled the multidisciplinary team to determine Student's continued eligibility as a child with \*\*\* and identified the new eligibility of \*\*\*. The FIE provided the information necessary to develop Student's educational program, assessed Student in all areas of suspected disability, and was sufficiently comprehensive to identify all of Student's educational and related services needs.

**ii. 2013 FBA**

Petitioner asserts the District failed to address Student's behavioral needs by relying on Student's 2013 FBA to prepare BIPs for Student in the 2015-2016 and 2016-2017 school years.

Petitioner's challenge to the appropriateness of the 2013 FBA is not timely. The FBA was completed well before the accrual date of July 22, 2015. Assuming, *arguendo*, that the appropriateness of the 2013 FBA could be at issue, Petitioner does not contend that Student's

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<sup>233</sup> See Texas Educ. Code § 29.004.

<sup>234</sup> 34 C.F.R. §§ 300.502(b)(2)-(3), 300.301, 300.303 - 300.311.



functions of behavior were incorrectly identified. In fact, both the BCBA who has contracted with the District and the educational diagnostician who conducted an IEE for Student agree that Student's functions of behavior, as identified in the 2013 FBA, continue to be attention-seeking and access to \*\*\*.<sup>235</sup> In addition, Petitioner's own witness acknowledged that an FBA need not meet particular requirements.<sup>236</sup> Further, the District LSSP who conducted the 2013 FBA testified that he is a Texas Behavior Support Initiative (TBSI) trainer and the 2013 FBA meets TBSI standards.<sup>237</sup>

However, Petitioner correctly argues that Student's \*\*\* instances of \*\*\*, occurring for the first time in the 2014-2015 school year, were new behaviors not identified in the 2013 FBA.<sup>238</sup> As a result, the May 2015 ARDC decided to conduct a new FBA. At Mother's request, the ARDC agreed to wait until the beginning of the 2015-2016 school year for the assessment. But from the beginning of the school year until \*\*\*, 2015, Student's behavior did not include \*\*\* or \*\*\*; there was nothing to assess so the FBA was not conducted.

Student's increasing behavior problems began in \*\*\* 2015. Student \*\*\* on \*\*\*, 2015. In December 2015, at Mother's request, the District ordered a new FBA to be conducted by an independent educational diagnostician. At the same time, the District conducted its own psychological evaluation of Student, completed in February 2016. The independent educational diagnostician provided her report to the District in April 2016 without having completed the FBA, partly due to a computer malfunction. The ARDC relied instead on the psychological evaluation contained in the February 2016 FIE to update Student's BIP. Reliance on the psychological evaluation in lieu of an updated FBA was appropriate.

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<sup>235</sup> Tr. at 694, 728 (\*\*\*) ; Tr. at 1214 (\*\*\*) .

<sup>236</sup> Tr. at 1094 (\*\*\*) .

<sup>237</sup> Tr. at 195, 257-258 (\*\*\*) .

<sup>238</sup> Joint Ex. 1 at 84; Joint Ex. 4 at 21-23, 25-26.

**iii. IEEs**

Parents of a student with a disability have the right to obtain, at public expense, an IEE conducted by a qualified examiner who is not employed by the District if Parents disagree with the District's FIE.<sup>239</sup> "Public expense" means that the District either pays for the full cost of the IEE or otherwise ensures that the IEE is provided at no cost to Parents.<sup>240</sup>

Pursuant to Mother's request at the December 2015 ARDC meeting, the District paid for Cognitive, Achievement, and Functional Behavior IEEs. The IEEs were reviewed by the ARDC in the spring of 2016, at meetings in which Mother was present.

Additional IEEs were requested in April 2016 and paid for by the District. Independent evaluators conducted psychological, language, counseling, and OT evaluations. The IEEs were reviewed and considered by the ARDC in November 2016, when Mother was present.

Petitioner does not disagree with the results of the IEEs or challenge their timeliness or appropriateness.

**iv. Analysis and Conclusion**

The District timely referred Student for special education evaluations. Student was re-evaluated as soon as the District suspected Student might have an unidentified disability. When Mother requested IEEs, the District immediately acquiesced.

Petitioner's challenge to the appropriateness of the 2013 FBA is not timely as the FBA was completed before the accrual date for this proceeding. Petitioner presented no evidence to challenge the appropriateness of the 2016 FIE or the IEEs. Instead, Respondent presented persuasive evidence that the educational diagnostician's April 2016 IEE, which did not include the FBA paid for by the District, was neither timely nor appropriate.

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<sup>239</sup> 34 C.F.R. § 300.502(a)-(b).

<sup>240</sup> 34 C.F.R. § 300.502(a)(3)(ii).

Even if the District had committed a procedural error by relying on the 2013 FBA and not evaluating Student sooner for an unidentified disability, the error would not have amounted to a denial of FAPE. Mother was not denied the opportunity for meaningful participation in Student's educational process and Student did not suffer any loss of educational opportunity.<sup>241</sup>

Mother fully participated in the ARDC meetings in the 2015-2016 and 2016-2017 school years. Many of her suggestions and/or those of her advocate or attorney were adopted by the ARDC. The ARDC considered all of the IEEs and incorporated some IEE recommendations into Student's IEP.

The evidence shows that beginning with the July 22, 2015 accrual date for this proceeding, Student's BIP was revised as Student's behavioral needs changed. Student progressed toward or met Student's IEP goals, in spite of Student's behavior issues. Student did not suffer a loss of educational opportunity as a result of any procedural error by the District.

Petitioner did not prove that the District denied Student a FAPE by committing the procedural error of failing to timely and appropriately evaluate Student in all areas of suspected disability.

- 2. Second Prong of *Rowley*: Student's IEP was reasonably calculated for Student to receive meaningful educational benefit**
  - a. Student's IEP was individualized, based on Student's assessments and performance**

An IEP must meet the requirements of 34 C.F.R. §§ 300.320 and 300.324.<sup>242</sup> All members of the ARDC must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARDC concerning required elements of the IEP must be made by mutual agreement, if possible.<sup>243</sup>

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<sup>241</sup> 34 C.F.R. § 300.513(a)(2)(ii), (iii).

<sup>242</sup> 19 Tex. Admin. Code § 89.1055(a).

<sup>243</sup> 19 Tex. Admin. Code § 89.1050(g).

The ARDC complied with the IDEA's regulatory requirements and developed IEPs reasonably calculated to provide a meaningful educational benefit to Student according to the four factors set out by the Fifth Circuit.<sup>244</sup> As set forth *supra*, the program was administered in the LRE, services were provided in a coordinated and collaborative manner by the key "stakeholders," and Student received academic and nonacademic benefit.

The evidence shows that, when developing Student's IEPs and revised IEPs, the ARDC considered Student's strengths, Mother's concerns, the results of Student's most recent evaluations, and Student's academic, developmental, and functional needs.<sup>245</sup> The ARDC also considered Student's need for related services.<sup>246</sup>

In addition, the District provided Student with appropriate behavioral supports including specialized instruction and appropriate related services tailored to address identified behavioral issues that adversely affect Student's education and are based on Student's individual needs.<sup>247</sup> Student's former BIPs and current BIP have been individualized, based on the 2013 FBA, evaluations, disciplinary records, and information from Mother, Student, and District staff. Through the years, the ARDC has attempted to manage Student's behavior through multiple meetings discussing intervention strategies, changes in placement, changes to Student's IEP, revising Student's BIP, staff training, and teacher training.<sup>248</sup> The BIP has evolved as Student's behavior has changed.

The hearing officer concludes Student's IEP, including Student's BIP, were individualized, based on Student's assessments and performance.

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<sup>244</sup> *Bobby R.*, at 347-349, citing to *Cypress-Fairbanks*, 118 F.3d at 247-248, 253; 34 C.F.R. §§ 300.320 and 300.324.

<sup>245</sup> 34 C.F.R. § 300.324(a)(1).

<sup>246</sup> 34 C.F.R. § 300.320(a)(4).

<sup>247</sup> 34 C.F.R. §§ 300.34, 300.320-328.

<sup>248</sup> Tr. at 308 (\*\*\*)

**b. The IEP was administered in the LRE**

**i. Applicable Law**

The IDEA's LRE provision requires that students with disabilities receive their education in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from the student's nondisabled peers and community.<sup>249</sup> To remove a child from a regular education environment, the ARDC must consider whether the nature and severity of the child's disability is such that education in a regular classroom setting cannot be satisfactorily achieved, regardless of the use of supplemental aids or services; whether placement in the regular classroom will potentially be harmful to the child; and whether the IEP must include positive behavioral interventions and supports in the case of a child whose behavior impedes the child's learning or that of others.<sup>250</sup> In making a placement decision, "first consideration" should be given to placement in a regular classroom before considering more restrictive placement options on the continuum of alternative placements, which includes special classes, special schools, home instruction, and instruction in hospitals and institutions.<sup>251</sup>

But the LRE mandate does not override the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program.<sup>252</sup> Conversely, if a student shows awareness and some positive reaction to being with peers without

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<sup>249</sup> 34 C.F.R. § 300.114(a).

<sup>250</sup> 34 C.F.R. §§ 300.116, 300.324(a)(2)(i); *see also* *Oberti v. Board of Education*, 995 F.2d 1204 (3d Cir. 1993); and *Daniel R .R. v. State Board of Education*, 874 F.2d 1036, 1048 (5th Cir. 1989).

<sup>251</sup> *Letter to Cohen*, 25 IDELR 516 (OSEP 1996); 34 C.F.R. § 300.115(a), (b); 19 Tex. Admin. Code § 89.63.

<sup>252</sup> *P. v. Newington Bd. of Educ.*, 546 F.3d 111 (2d Cir. 2008); *see also* *Hartmann v. Loudoun County Bd. of Educ.*, 118 F.3d 996 (4th Cir. 1997), *cert. denied*, 111 LRP 18076, 522 U.S. 1046 (1998).

disabilities, then such interaction weighs in favor of inclusion (assuming the student can receive a meaningful educational benefit and is not unduly disruptive).<sup>253</sup>

Notwithstanding a presumption in favor of inclusion, Circuit Courts have ruled that districts generally are not required to mainstream a student with a disability who threatens the safety of other students or poses a danger to \*\*\*self if placed in the general education classroom, or engages in significantly disruptive behavior, even with the use of behavioral intervention, that interferes with the education of classmates.<sup>254</sup>

## ii. Analysis and Conclusion

As set out in the Findings of Fact, the ARDC met all legal requirements in determining the LRE for Student in each of six different ARDC meetings—beginning with the November 2014 annual ARDC meeting and concluding with the December 2016 revision ARDC meeting.<sup>255</sup> To meet Student’s unique educational needs, the ARDC placed Student in a combination of special education and general education settings, changed Student’s placement as necessary to address Student’s evolving academic and nonacademic needs, and ultimately determined the LRE for Student is to receive all instruction in the self-contained \*\*\* classroom.

After considering a continuum of placements, the ARDC correctly decided to place Student in the \*\*\* classroom for all instruction. Student’s need for intensive academic instruction due to Student’s \*\*\* cannot be provided in the general education setting even with modifications and accommodations. Student’s special education teacher uses a curriculum specifically designed for students with \*\*\*, providing Student with a basic floor of educational opportunity unavailable to Student in general education. Over time, Student’s behavior in the general education classroom, even with behavioral supports, strategies, or interventions,

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<sup>253</sup> *Daniel R. R.*, 874 F.2d at 1048.

<sup>254</sup> *See, e.g., R.R. Roncker v. Walter*, 700 F.2d 1058 (6th Cir. 1983); cert. denied, 464 U.S. 864, 104 S.Ct. 196, 78 L.Ed.2d 171 (1983); *A.W. v. Northwest R-1 School District*, 813 F.2d 158 (8th Cir. 1987); cert. denied, 484 U.S. 847, 108 S.Ct. 144, 98 L.Ed.2d 100 (1987); *Sacramento City Unified School District v. Holland*, 14 F.3d 1398 (9th Cir. 1994).

<sup>255</sup> 34 C.F.R. §§ 300.114 through 300.120; 300.327; 300501(c)(1); 19 Tex. Admin. Code § 89.63(a), (c).

significantly impaired Student's own learning and that of others. Student's removal from the general education classroom to the \*\*\* classroom was necessary due to Student's \*\*\* behavior. Student's BIP is consistently implemented in the \*\*\* classroom and Student's behavior has improved. In addition, Student retains opportunities to interact with general education peers \*\*\*.<sup>256</sup>

The hearing officer finds Student's placement is based on Student's unique educational needs and circumstances, and on Student's IEP.<sup>257</sup> Petitioner did not prove that the District denied Student a FAPE by failing to place Student in the LRE.

**c. Key stakeholders provided the services in a coordinated and collaborative manner**

Parents are an integral part of the IEP development process and, as such, are key stakeholders in the provision of services to their child, as are a student's teachers and a school district's administrators.<sup>258</sup>

Petitioner offered no evidence of any lack of coordination or collaboration in the development or implementation of Student's IEP. The evidence shows Mother fully participated in the ARDC meetings, sometimes with the assistance of an advocate or an attorney; regularly communicated with Student's teachers and District staff;<sup>259</sup> and is receiving \*\*\* from a BCBA provided by the District. In addition, Student's teachers fully participated in the IEP development process, writing draft goals, preparing PLAAFPs, and participating in ARDC meetings. School administrators also were directly involved in implementing Student's IEP and BIP, either through direct contact with Student and Mother, consulting with Student's teachers, or attending ARDC meetings.

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<sup>256</sup> See 34 C.F.R. § 300.107.

<sup>257</sup> 71 Fed. Reg. 46, 586 (2006).

<sup>258</sup> 34 C.F.R. § 300.321(a).

<sup>259</sup> Tr. at 594-595 (\*\*\*); Tr. at 894 (\*\*\*).

**d. Positive academic and nonacademic benefits were demonstrated**

Between the July 22, 2015 accrual date and January 2017, Student's skill levels improved in both academic and nonacademic areas.<sup>260</sup> Despite missing \*\*\* days of school during the 2015-2016 school year, Student mastered three of Student's IEP goals. By June \*\*\*, 2016, Student's progress on the remaining three IEP goals was sufficient for Student to master them by the November 2016 annual ARDC meeting date. Student learned many things beyond Student's IEP goals.

In the 2016-2017 school year, Student's Reading and Math skills have improved. At the beginning of the year, Student required \*\*\*, and was reading at the lower \*\*\*-grade level. By December 2016, Student's reading level was at the upper \*\*\* grade/beginning of \*\*\* grade level. As of January 2017, Student had mastered some of the November 2016 IEP goals.<sup>261</sup>

A comparison of Student's behavior data from the 2015-2016 and 2016-2017 school years shows a decrease in \*\*\*, \*\*\*, the number of restraints, and \*\*\* \*\*\*. Since Student's \*\*\*, 2016 \*\*\*, Student's \*\*\* behavior has stopped and Student's \*\*\* behavior has improved. In the \*\*\* classroom, Student has responded well to a system that rewards appropriate behavior. Student has an upward trend line in the number of \*\*\*. Student's improved behavior is due in large part to Student's placement full-time in the \*\*\* classroom and the implementation of a revised BIP, all in December 2016.

Petitioner argues Student needs residential placement to make more academic and nonacademic progress. But school districts have no obligation under the IDEA to maximize a

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<sup>260</sup> The due process hearing was held January 25-27, 2017, before the end of the 2016-2017 school year.

<sup>261</sup> The provision of FAPE does not necessarily require a student to achieve each IEP goal and objective. The IDEA only provides an entitlement to receive the services enumerated in the IEP, and makes no guarantees as to educational success or outcome. *See Gill v. Columbia 93 Sch. Dist.*, 1999 WL 33486650, W.D. Mo. (1999), *aff'd* 217 F. 3d 1027 (8th Cir. 2000) (stating that minimal educational gains and slow progress do not preclude a finding that the student received some educational benefit).



student's educational benefit.<sup>262</sup> Petitioner did not provide persuasive evidence that Student's academic instruction or behavior deprived Student of a positive academic or nonacademic benefit. The hearing officer finds Student obtained positive academic and nonacademic benefits from the education provided to Student by the District.<sup>263</sup>

### C. Student's IEPs and BIPs Were Properly Implemented

After an IEP is written and an appropriate placement determined, the local education agency is obligated to provide the student with special education and related services as listed in the IEP.<sup>264</sup> The local education agency must implement a student's IEP with all required components.<sup>265</sup>

A party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. Failure to implement a material portion of the IEP amounts to denial of a FAPE.<sup>266</sup>

Student's special education teachers for 2015-2016 and 2016-2017 testified that they implemented the IEP and BIP throughout the school year. Their testimony is supported by evidence of Student's academic and nonacademic progress, as set out above. Petitioner does not allege that Student failed to receive the modifications, accommodations, or services set out in the IEPs.

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<sup>262</sup> *Rowley*, at 207-208.; see also *Klein Indep. Sch. Dist. v. Hovem*, 690 F.3d 390 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 1600, 113 LRP 10911 (2013) ("Nowhere in *Rowley* is the educational benefit defined exclusively or even primarily in terms of correcting the child's disability.")

<sup>263</sup> 34 C.F.R. §§ 300.320 and 300.324; *Rowley*, 458 U.S. at 181; *Bobby R.*, 200 F.3d at 347-348, citing to *Cypress-Fairbanks*, 118 F.3d at 253.

<sup>264</sup> 34 C.F.R. § 300.323(c).

<sup>265</sup> 34 C.F.R. § 300.323(c).

<sup>266</sup> *Bobby R.*, 200 F.3d. 348-349.

The evidence does not support a finding that the District failed to implement Student's IEPs and BIPs as written. The District's implementation of Student's IEP and BIP on a regular basis was more than *de minimis* and was not a denial of FAPE.<sup>267</sup>

#### **D. Private School Placement**

Private school placement is available as a remedy under the IDEA when a hearing officer finds the school district did not make FAPE available to the student in a timely manner prior to the private enrollment, and the private placement is appropriate.<sup>268</sup> In the instant case, the hearing officer finds the District provided Student with a FAPE so the appropriateness of Student's placement at \*\*\* is not at issue.

#### **E. Conclusion**

After considering the evidence and parties' closing arguments, the hearing officer finds Petitioner did not meet Student's burden of proof to prevail on any of the identified issues for this proceeding. Instead, the evidence shows the District provided Student a FAPE in accordance with the IDEA and relevant case law. Accordingly, Petitioner is not entitled to any of the requested relief, including Student's placement at \*\*\*.

### **VI. CONCLUSIONS OF LAW**

1. The District is a local educational agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Parents of students with disabilities are entitled to file a due process complaint and have a hearing on any matter relating to the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.507-300.513.

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<sup>267</sup> *Bobby R.*, 200 F.3d at 349.

<sup>268</sup> *Sch. Committee of Town of Burlington v. Dept. of Educ. Mass.*, 471 U.S. 359 (1985); 34 C.F.R. § 300.148.

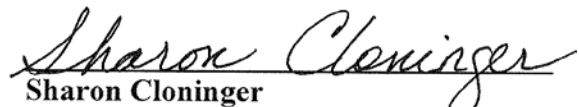
3. Petitioner bears the burden of proof on all issues raised in the proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
4. A party attacking the appropriateness of an IEP established by a school district bears the burden of showing why the IEP and resulting placement were inappropriate under the IDEA. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-1011 (5th Cir. 2010).
5. The 1-year statute of limitations applies to this proceeding. 19 Tex. Admin. Code § 89.1151(c).
6. The District determined that Student is a child with IDEA-enumerated disabilities, who by reason thereof, is eligible for special education and related services, which Student receives as a child with \*\*\* and \*\*\*. 34 C.F.R. § 300.8(a)(1); 19 Tex. Admin. Code § 89.1040(a), (c)(4), (c)(5).
7. The District provided Student with a FAPE in the 2015-2016 and 2016-2017 school years. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181; 102 S.Ct. 3034, 3038 (1982); *Bobby R.*, 200 F.3d 341, 347-348 (5th Cir. 2000).
8. The District provided Student with positive behavioral supports and interventions. 34 C.F.R. § 300.324(a)(2)(i).
9. The District developed appropriate IEPs for Student. 34 C.F.R. §§ 300.320 through 300.324; *Rowley*, 458 U.S. at 181; *Bobby R.*, 200 F.3d at 347-348, citing to *Cypress-Fairbanks*, 118 F.3d at 253.
10. The District's ARDC considered private evaluations when preparing Student's IEP. 34 C.F.R. § 300.502(c)(1).
11. The District fully implemented Student's IEPs as written. 19 Tex. Admin. Code § 89.1075(e).
12. Student's placements in the 2015-2016 and 2016-2017 school years met the LRE requirements of the IDEA. 20 U.S.C. § 1412(a)(5); 34 C.F.R. §§ 300.114, 300.116; *Daniel R. R. v. State Board of Education*, 874 F.2d 1036, 1039, 1046-1047 (5th Cir. 1989).
13. The District's evaluations of Student were conducted in accordance with IDEA requirements and are appropriate. 34 C.F.R. §§ 300.301, 300.303 through 300.311.

**ORDER**

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requested relief is denied.

**SIGNED March 7, 2017.**

  
Sharon Cloninger  
Special Education Hearing Officer  
For the State of Texas

**NOTICE TO THE PARTIES**

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States.<sup>269</sup>

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<sup>269</sup> 20 U.S.C. § 1451(i)(2); 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).